



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

JUN 12 2012

Tan Nguyen

Brooklyn Park, Minnesota 55444

RE: MUR 5924
Tan Nguyen
Tan Nguyen for Congress and Tan
Nguyen, in his official capacity as
Treasurer

Dear Mr. Nguyen:

On June 7, 2012, the Federal Election Commission accepted the signed conciliation agreement you submitted on behalf of yourself and your political committee in settlement of violations of 2 U.S.C. §§ 434(b), 441a(f) and 441d(a), provisions of the Federal Election Campaign Act of 1971, as amended. Accordingly, the file has been closed in this matter. Please be advised that the lack of a civil penalty in this agreement reflects unusual factors brought forth during the investigation.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). Information derived in connection with any conciliation attempt will not become public without the written consent of you and the Commission. *See* 2 U.S.C. § 437g(a)(4)(B).

Enclosed you will find a copy of the fully executed conciliation agreement for your files. If you have any questions, please contact me at (202) 694-1548.

Sincerely,

A handwritten signature in cursive script that reads "Elena Paoli".

Elena Paoli
Attorney

Enclosure
Conciliation Agreement

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BEFORE THE FEDERAL ELECTION COMMISSION

2012 APR 16 PM 12: 21

OFFICE OF GENERAL
COUNSEL

In the Matter of)
) MUR 5924
Tan Nguyen)
Tan Nguyen for Congress and Tan Nguyen,)
in his official capacity as Treasurer)

CONCILIATION AGREEMENT

This matter was initiated by a signed, sworn, and notarized complaint by Gary Schons, State of California, Department of Justice. The Federal Election Commission ("Commission") found reason to believe that Tan Nguyen violated 2 U.S.C. §§ 441a(f) and 441d(a) and Tan Nguyen for Congress and Tan Nguyen, in his official capacity as Treasurer, ("the Committee") violated 2 U.S.C. §§ 441a(f), 434(b), 434(b)(4), and 441d(a).

NOW, THEREFORE, the Commission and Tan Nguyen and the Committee ("the Respondents"), having participated in informal methods of conciliation, prior to a finding of probable cause to believe, do hereby agree as follows:

I. The Commission has jurisdiction over the Respondents and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. Respondents have had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. Respondents enter voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. Tan Nguyen was a candidate for the 2006 U.S. House of Representatives seat from the 47th District of California.

2. Tan Nguyen for Congress is Tan Nguyen's authorized committee and is a political committee within the meaning of 2 U.S.C. § 431(4).

3. Tan Nguyen is the treasurer of Tan Nguyen for Congress.

Applicable Law

4. No candidate or political committee shall knowingly accept any contribution in violation of the Act. 2 U.S.C. § 441a(f). No person shall make contributions to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate exceed \$2,300. 2 U.S.C. § 441a(a)(1). Contributions include the financing by any person of the dissemination of any written form of campaign materials prepared by the candidate, his campaign committees, or their authorized agents. 2 U.S.C. § 441a(a)(7)(B).

5. A payment for a coordinated communication is an in-kind contribution to the candidate's authorized committee with which it is coordinated and must be reported as an expenditure made by that candidate's authorized committee. 11 C.F.R. § 109.21(b)(1). To determine whether a communication is coordinated, 11 C.F.R. § 109.21 sets forth a three-pronged test: (1) the communication must be paid for by a person other than a Federal candidate, a candidate's authorized committee, or political party committee, or any agent of any of the foregoing; (2) one or more of the four content standards set forth in 11 C.F.R. § 109.21(c) must be satisfied; and (3) one or more of the six conduct standards set forth in 11 C.F.R. § 109.21(d) must be satisfied. 11 C.F.R. § 109.21(a).

6. The knowing and willful standard requires knowledge that one is violating the law. The phrase "knowing and willful" indicates that "acts were committed with full knowledge of all the relevant facts and a recognition that the action is prohibited by law...." 122 Cong. Rec. H3778 (daily ed. May 3, 1976); *see also* *AFL-CIO v. FEC*, 628 F.2d 97, 98, 101-02 (D.C. Cir.),

cert. denied, 449 U.S. 982 (1980) (noting that a “willful” violation includes “such reckless disregard of the consequences as to be equivalent to a knowing, conscious, and deliberate flaunting of the Act,” but concluding on the facts before it that this standard was not met) (*cited in National Right to Work Comm. v. FEC*, 716 F.2d 1401, 1403 (D.C. Cir. 1983)).

7. An inference of knowing and willful conduct may be drawn “from the defendant’s elaborate scheme for disguising” his or her actions. *United States v. Hopkins*, 916 F.2d 207, 214-15 (5th Cir. 1990).

8. The evidence need not show that the defendant “had specific knowledge of the regulations” or “conclusively demonstrate” a defendant’s “state of mind,” if there are “facts and circumstances from which the jury reasonably could infer that [the defendant] knew her conduct was unauthorized and illegal.” *Id.* at 213 (*quoting United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir.), *cert. denied*, 439 U.S. 838 (1989)).

9. Whenever a political committee makes a disbursement for the purpose of financing any communication through any mailing, such communication if paid for and authorized by a candidate, an authorized political committee of a candidate, or its agents, shall clearly state that the communication has been paid for by such authorized political committee. 2 U.S.C. § 441d(a)(1). If such communication is paid for by other persons but authorized by a candidate, an authorized political committee of a candidate, or its agents, it shall clearly state that the communication is paid for by such other persons and authorized by such authorized political committee. 2 U.S.C. § 441d(a)(2).

10. Each treasurer of a political committee shall file reports of receipts and disbursements. 2 U.S.C. § 434(a)(1). Each report shall disclose the total amount of all contributions and expenditures. 2 U.S.C. §§ 434(b)(2) and (4).

Factual Background

11. In August 2006, Congressional candidate Tan Nguyen met with the Orange County Registrar of Voters to express his concern that "illegal aliens," specifically Mexicans, would be voting in the General Election. Nguyen reportedly feared that illegal Hispanic immigrants would vote for his opponent, Loretta Sanchez. In September, Nguyen spoke with Barbara Coe, the president of California Coalition for Immigration Reform ("CCIR"), and expressed the same concern. She told him that CCIR had often publicized the message that only citizens can vote and faxed him a proposed flyer and several pages of blank CCIR letterhead.

12. Sometime in September 2006, Roger Rudman, a friend and campaign worker for Nguyen, drafted a letter, warning immigrants of potential criminal penalties for voting, in English in consultation with Tan Nguyen. Rudman subsequently obtained a Spanish translation of the letter and signed it with the fictitious name "Roberto Gonzalez." At the same time, Nguyen ordered a mailing list of voters from his usual list vendor, Political Data, Inc. ("PDI"). Nguyen asked PDI to include voters that were registered Democrats or "Did not state" voters with a Hispanic surname and "Spanish birthplace." Nguyen paid \$1,131.18 for the voter list with his American Express credit card.

13. Also in September 2006, Nguyen gave a piece of the blank CCIR letterhead to Chi Dinh, his campaign secretary and office manager, and directed her to make a few stylistic changes to the letterhead (for example, adding an image of an eagle) and create a mailing envelope with a return address showing CCIR's name and address. Tan Nguyen approved Dinh's changes to the CCIR letterhead and directed her to electronically merge the Spanish translation of the letter onto the CCIR letterhead.

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14. In early October 2006, Rudman and Mark Nguyen, another friend and campaign volunteer and also Dinh's fiancé, took charge of the mailing, with the assistance of Dinh. Tan Nguyen emailed Dinh the list of voters he had purchased from Political Data, and Dinh, using one of Mark Nguyen's email accounts, emailed the list to the mailing house. Mark Nguyen asked his Los Angeles Police Department colleague Sergio Ramirez to "proof" the letter, which Ramirez did. Mark Nguyen asked Ramirez to sign the letter to show that he proofed it. Without asking Ramirez, Mark Nguyen had Dinh change the signatory of the letter to "Sergio Ramirez" and scanned Ramirez's signature onto the letter.¹ Mark Nguyen then coordinated getting the voter list, the letter, and envelope to Mailing Pros, the mailing house used by the Committee for mailings.

15. On October 9, Mark Nguyen advised Tan Nguyen that the mailing house was taking longer than desired. It appears that the Committee wanted the letters to be delivered before the date for absentee voters to cast ballots. Tan Nguyen called the mailing house and urged it to expedite the mailing for his friend Mark Nguyen. Tan Nguyen did not tell the mailing house that Mark Nguyen worked on his campaign or that the letters were from his Committee. On October 12, after almost all the letters had been mailed, Mark Nguyen went to Mailing Pros and paid \$4,304.57 for the mailing with his credit card. Mark Nguyen was not reimbursed for the mailing expense.

V. Respondents committed the following violations:

1. Tan Nguyen knowingly and willfully violated 2 U.S.C. § 441a(f) by accepting an excessive in-kind contribution in the form of a coordinated communication.

¹ Right before the letter was sent to the mailing house, Rudman and the Spanish translator, Robert Tapia, told Mark Nguyen that Ramirez's signature was too "feminine." Mark Nguyen then wrote a "new" signature for Ramirez, and that signature was scanned onto the letter.

2. Tan Nguyen knowingly and willfully violated 2 U.S.C. § 441d(a) by failing to include a disclaimer on a public communication.

3. Tan Nguyen for Congress and Tan Nguyen, in his official capacity as Treasurer, knowingly and willfully violated 2 U.S.C. §§ 441a(f) and 434(b) by accepting and failing to report an excessive in-kind contribution in the form of a coordinated communication.

4. Tan Nguyen for Congress and Tan Nguyen, in his official capacity as Treasurer, knowingly and willfully violated 2 U.S.C. § 441d(a) by failing to include a disclaimer on a public communication.

5. Tan Nguyen for Congress and Tan Nguyen, in his official capacity as Treasurer, violated 2 U.S.C. § 434(b)(4) by failing to report disbursements.

VI. Respondents will take the following actions:

1. In ordinary circumstances, the Commission would seek a civil penalty based on the knowing and willful violations outlined in this agreement. However, the Commission is taking into account the fact that Respondent Tan Nguyen, through the submission of financial documentation to the Commission and additional representations, has demonstrated that financial hardship prevents him from paying a civil penalty in this matter. These representations include that Respondent Nguyen has significant liabilities and no significant assets, and has been convicted and incarcerated in a criminal matter arising from the same circumstances as described herein. In addition, in its most recent disclosure report, the Committee shows zero cash on hand and liabilities of \$523,729.44. The Commission regards these submissions and representations as material representations. Due to the mitigating circumstances presented by Respondent Nguyen's financial condition, the Commission agrees that Respondent Nguyen has demonstrated financial hardship that prevents him from paying a civil penalty in this matter and that no civil

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Tan Nguyen for Congress et al.
Conciliation Agreement

penalty shall be due. If evidence is uncovered indicating Respondent's financial condition is not as stated, a civil penalty of up to forty-two thousand dollars (\$42,000) shall be immediately due, pursuant to 2 U.S.C. § 437g(a)(5)(B).

2. Respondent Tan Nguyen will cease and desist from violating 2 U.S.C. § 441a(f) and 2 U.S.C. § 441d(a).

3. Respondent Tan Nguyen for Congress and Tan Nguyen, in his official capacity as Treasurer, will cease and desist from violating 2 U.S.C. §§ 441a(f), 434(b), 441d(a), and 434(b)(4).

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

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Conciliation Agreement

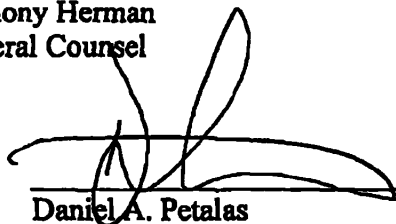
IX. Respondents shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirements contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Anthony Herman
General Counsel

BY:


Daniel A. Petalas
Associate General Counsel
for Enforcement

Date

6/10/12

FOR THE RESPONDENTS:


Tan Nguyen

Date

6/9/2012


Tan Nguyen
Treasurer, Tan Nguyen for Congress

Date

6/9/2012